

#### REMARKS

Claims 36-46, 48-49 and 52-56 are pending in the subject application. Applicant notes that Claims 1-35, 47 and 50-51 were canceled in a Preliminary Amendment that was filed with the subject application on August 28, 2003. Claims 48-49 and 52-56 are allowed. By this amendment, claims 36 and 44-46 have been amended. Applicant maintains that the amendments to the claims do not raise an issue of new matter. Claims 44-46 have been amended to recite limitations set forth in Claim 36. Support for the amendments to Claim 36 can be found at least in the previous version of the claim and on page 8, lines 25-28, of the specification.

The specification has been amended to update the priority data for the subject application. Applicant maintains that the amendment to the specification does not raise an issue of new matter.

Entry of the amendments is respectfully requested.

#### Allowable Subject Matter

Claims 48-49 and 52-56 are allowed.

Claims 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 44-46 have hereinabove been amended to recite the limitations set forth in independent Claim 36. Accordingly, upon entry of this amendment, Claims 44-46 should also be allowable.

#### Obviousness-type Double Patenting Rejection

Claims 19-43 and 50-51 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,306,086.

Claims 1-18 were rejected under the judicially created doctrine of obviousness-

type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,689,058.

Claims 1-35 and 50-51 were previously canceled in a Preliminary Amendment, thereby rendering these rejections moot with respect to those claims.

Applicant attaches hereto a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) to overcome the double patenting rejection over U.S. Patent No. 6,306,086. A fee of \$65.00 is required for submitting a Terminal Disclaimer for a small entity, and a check including this amount is enclosed.

Rejection under 35 U.S.C. §102(b)

Claims 1-43 and 47 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,770,636 (Buschke), which is referred to below as the '636 patent.

Claims 1-35 and 47 were previously canceled in a Preliminary Amendment, thereby rendering these rejections moot with respect to those claims.

Independent Claim 36 has hereinabove been amended to amend step (c) to recite: "(c) in a second trial, presenting to the subject a second list of items to be recalled from memory, wherein the items presented in the second trial consist essentially of items not recalled by the subject from memory in the first trial." Accordingly, Claim 36 and dependent Claims 37-43 are distinguished from Buschke '636 since in '636 the same number is presented to the subject to be recalled from memory during both immediate recall and during delayed recall. The memory monitor in '636 is illustrated schematically in Figure 3. The memory test in '636 is described on Column 6, line 62, through Column 7, line 17. Examples of results of memory tests in '636 showing recall when the same number is presented to a subject during immediate recall and during delayed recall are reported in Columns 13 and 14 in '636. Accordingly, Buschke '636 does not anticipate the presently claimed invention, and reconsideration and withdrawal of this ground of rejection are respectfully requested.

Applicant: Herman Buschke  
Appl. No.: 10/650,371  
Filed: August 28, 2003  
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### CONCLUSIONS

In view of the amendments and remarks made hereinabove and of the Terminal Disclaimer attached hereto, reconsideration and withdrawal of the rejections set forth in the June 17, 2005 Office Action and passage of the pending claims to allowance are respectfully requested. If there are any minor matters that prevent allowance of the subject application, the Patent Office is requested to telephone the attorney listed below.

Applicant submits herewith a check for \$365.00 to cover the following fees for a small entity: 1) \$300.00 for filing three additional independent claims (\$100.00 per independent claim) and 2) \$65.00 for filing a Terminal Disclaimer. No other fees are deemed necessary in connection with this reply. However, if any other fee is required to preserve the pendency of the subject application, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 01-1785. Overpayments may also be credited to Deposit Account No. 01-1785.

Respectfully submitted,  
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By   
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